South Carolina Department of Insurance

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Director

BULLETIN NUMBER 2014-14

TO: All Insurers Licensed to Transact Accident and Health Insurance Business within the State of South Carolina and All South Carolina Licensed Health Maintenance Organizations (collectively "Health Insurance Issuers")

FROM: Raymond G. Farmer
Director of Insurance

SUBJECT: Requirements Applicable to Hospital Indemnity or Other Fixed Indemnity Policies Sold in the Individual Market

DATE: December 17, 2014

I. BACKGROUND, SCOPE AND PURPOSE

This Bulletin is directed to all insurers writing hospital indemnity policies or other fixed indemnity policies sold in the individual market in South Carolina. It is intended to provide guidance regarding the Department's implementation and enforcement of the recently released rules and guidance from the federal government regarding hospital indemnity or other fixed indemnity polices. The guidance originates from the Centers for Medicare and Medicaid Services' (CMS) final rule entitled *Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond* (79 FR 30240) issued on May 27, 2014 and other subsequent guidance issued by CMS.

The federal rule and this Bulletin apply only to hospital indemnity or other fixed indemnity insurance policies sold in the individual market. It does not apply to any other type or category of insurance that is listed separately as excepted benefits in the federal Public Health Service Act (e.g., disability income, specified disease insurance, accident insurance, etc.), regardless of whether benefits under such coverage are paid as a fixed dollar amount.

II. SUMMARY OF FEDERAL REQUIREMENTS FOR HOSPITAL INDEMNITY OR OTHER FIXED INDEMNITY POLICIES SOLD IN THE INDIVIDUAL MARKET

In the federal rule and subsequent guidance, the federal government established the following conditions for a hospital indemnity or other fixed indemnity insurance policy sold in the individual market:

1. The benefits are provided only to individuals who attest, in their hospital indemnity or other fixed indemnity insurance application, that they have other health coverage that is considered minimum essential coverage within the meaning of 26 U.S.C. §5000A(f);

2. There is no coordination between the provision of benefits and an exclusion of benefits under any other health coverage;

3. The benefits are paid in a fixed dollar amount per period hospitalization or illness and/or per service regardless of the amount of expenses incurred and without regard to the amount of benefits provided with respect to the event or service under any other health coverage; and

4. A notice is displayed prominently in the application materials in at least 14-point type that has the following language:
   "THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSITUTE FOR MAJOR MEDICAL COVERAGE. LACK OF MAJOR MEDICAL COVERAGE (OR OTHER MINIMUM ESSENTIAL COVERAGE) MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES."

III. REQUIREMENTS FOR NEW SALES EFFECTIVE ON OR AFTER JANUARY 1, 2015 AND SAFE HARBOR EXTENSION TO MAY 1, 2015

For policies issued with an effective date beginning on or after January 1, 2015, the insurer must include in the initial insurance application a written attestation that the purchaser has minimum essential coverage as defined by the aforementioned rules and subsequent guidance issued by the federal government. This is a one-time attestation. The insurer shall not be required to confirm continuous major medical coverage by the purchaser.

The Department recommends that the following attestation clause be placed above the signature line:
"I hereby attest that I have major medical health insurance or Medicare that meets the requirements of minimum essential coverage as defined by the federal Affordable Care Act."

Additionally, federal guidance requires that the following notice must be displayed prominently in the application materials in at least 14 point type:
"THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. LACK OF MAJOR MEDICAL COVERAGE (OR OTHER MINIMUM ESSENTIAL COVERAGE) MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES."

In letters dated August 27 and October 8, 2014, addressed to the National Association of Insurance Commissioners, the Center for Consumer Information and Insurance Oversight (CCIIO) has indicated that no enforcement action would be taken against issuers (carriers) that filed policy form amendments or amendments to application materials with the Department by October 1, 2014. This safe harbor provision requires approved amendments or revised application materials to be in use no later than May 1, 2015. Carriers are advised to pay particular attention to the requirements of the CCIIO letters, which are attached as an appendix to this Bulletin. The Department will follow the same safe harbor guidance.

IV. CONTRACTS WITH EFFECTIVE DATES BEFORE JANUARY 1, 2015

For coverage that is already in force or that will take effect later in 2014, the same one-time notice and attestation requirements apply to the first renewal application with an effective date on or after October 1, 2016, if an application is required in order to renew the coverage. Alternatively, the carrier has the option to provide the notice and collect the attestation at any earlier date.

If no application for renewal is required because the policy or certificate renews automatically upon continued payment of premiums, the aforementioned requirements do not apply. As denoted in the federal guidance, the federally mandated language and attestation are only applicable on an application form. However, no later than October 1, 2016, the carrier shall send notice to each insured who was not given notice at the point of sale, in clear, conspicuous, and ordinary language, that the hospital or other fixed indemnity insurance does not meet the minimum essential coverage requirements of the Affordable Care Act.

The Department suggests that carriers use language substantially similar to the following notice:

> "THIS INSURANCE POLICY DOES NOT MEET THE AFFORDABLE CARE ACT'S REQUIREMENT THAT YOU MAINTAIN MINIMUM ESSENTIAL COVERAGE, ALSO KNOWN AS MAJOR MEDICAL INSURANCE. FAILURE TO MAINTAIN MINIMUM ESSENTIAL HEALTH COVERAGE MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES. THIS INSURANCE COVERAGE WILL REMAIN IN FORCE AS LONG AS YOU CONTINUE TO PAY YOUR PREMIUMS."

Carriers are not required to obtain the Department's approval of the notice sent to customers; however, carriers should maintain documentation demonstrating that this requirement was satisfied.

V. INQUIRIES ABOUT MINIMUM ESSENTIAL COVERAGE STATUS

Carriers may not make further inquiries to insureds about minimum essential coverage if the purpose of the inquiry is to seek to cancel or terminate a contract because of past or anticipated claims. If a carrier terminates the coverage of insureds who do not maintain minimum essential coverage, the carrier must establish and follow procedures that are applied uniformly without regard to claims experience or any actual or perceived risk factor.

VI. QUESTIONS

Questions regarding this Bulletin should be submitted via email to LAHmail@doi.sc.gov and include complete contact information (with company name, phone number and email address) for follow up.

CCIIO LETTER TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, DATED AUGUST 27, 2014

(SEE THE FOLLOWING TWO PAGES)

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DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

August 27, 2014

Mr. Brian Webb
National Association of Insurance Commissioners
444 North Capitol Street NW
Suite 700
Washington, D.C. 20001

Dear Mr. Webb:

The Centers for Medicare & Medicaid Services (CMS) understands that state insurance departments and insurance industry representatives have expressed concern about the applicability date of two new requirements for fixed indemnity insurance to be considered an excepted benefit in the individual market.[1]

Under the first requirement, individuals who purchase fixed indemnity insurance must attest, in their fixed indemnity insurance application, that they have other health coverage that is minimum essential coverage (or that they are treated as having minimum essential coverage due to their status as a bona fide resident of a United States territory). With respect to newly issued policies, this attestation requirement applies to policies initially issued on or after January 1, 2015.[2] Under the second requirement, a notice must be displayed prominently in the application materials stating that the fixed indemnity policy is a supplement to health insurance and is not a substitute for major medical coverage. This notice requirement applies to fixed indemnity insurance policy years beginning on or after January 1, 2015.[3]

CMS understands that in many states, fixed indemnity issuers must receive approval from state insurance regulators for any amendments to application materials prior to their use. We also understand that, due to other priorities, state regulators may not have adequate time to review and approve such fixed indemnity filings in time for issuers to comply with the January 1, 2015 applicability date.

In recognition of these issues, CMS will not take enforcement action against an issuer of fixed indemnity insurance for failure to meet the January 1, 2015 deadline (and encourages states with

[1] Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond (May 27, 2014), 79 FR 30240
[2] 45 CFR §148.220(b)(4)(i)
[3] 45 CFR §148.220(b)(4)(iv).

primary enforcement authority to exercise similar enforcement discretion) if all of the following conditions are met:

1. The applicable state authority requires prior approval of any amendments to fixed indemnity policy application materials.

2. The fixed indemnity issuer submits to the applicable state authority by October 1, 2014 revised application materials for approval that are consistent with attestation and notice requirements under the regulations and the issuer takes all required steps to obtain approval.

3. The issuer complies with all other applicable requirements for the fixed indemnity insurance to be considered an excepted benefit.

This policy will apply until the earlier of May 1, 2015, or the date upon which the issuer receives approval from the applicable State authority to use the application materials containing the required language.

We look forward to continuing to work with you and your staff to implement the Affordable Care Act.

Sincerely,

Robert Imes
Acting Director, Oversight Group
Center for Consumer Information and Insurance Oversight

CCIIO LETTER TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, DATED OCTOBER 8, 2014

(SEE THE FOLLOWING PAGE)

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DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

October 8, 2014

Mr. Brian Webb
National Association of Insurance Commissioners
444 North Capitol Street NW
Suite 700
Washington, D.C. 20001

Dear Mr. Webb:

In our letter to you dated August 27, 2014, we indicated that the Centers for Medicare & Medicaid Services (CMS) will not take enforcement action against an issuer of fixed indemnity insurance for failure to meet the January 1, 2015 deadline for new policies to comply with the attestation and notice requirements (and encouraged states with primary enforcement authority to exercise similar enforcement discretion) if certain conditions are met (see enclosed copy of the August 27, 2014 letter). We indicated that this policy will apply until the earlier of May 1, 2015, or the date upon which the issuer receives approval from the applicable State authority to use the application materials containing the required language.

Since the issuance of the August 27th letter, several stakeholders have contacted us to explain that it could take up to several months to have an insurance product ready for issuance once State approval is obtained due to IT configuration issues. Because of this additional time factor, it could be impractical for issuers to have the enforcement policy end upon approval by State authorities.

Accordingly, we are now revising the enforcement policy to extend for all new fixed indemnity insurance policies issued on or after January 1, 2015 and before May 1, 2015 in States where CMS is directly enforcing the Affordable Care Act and encourage the States with primary enforcement authority to do the same.

We look forward to continuing to work with you and your staff to implement the Affordable Care Act. Please contact Jim Mayhew of my staff at 410-786-9244 should you have any questions.

Sincerely,

Samara Lorenz
Acting Director, Oversight Group
Center for Consumer Information and Insurance Oversight

Enclosure: August 27, 2014 Letter to NAIC on Fixed Indemnity